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No. 80-1988

In The

Supreme Court of the United States

October Term, 1980

SHIRL BUSBY HART,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, State of Montana, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Montana Supreme Court's opinion in this case. The opinion is reported at 625 P. 2d 21 (1981).

REASONS WHY THE WRIT SHOULD BE DENIED

1. **The decision below gave full consideration to the issues and decided them correctly.**

Petitioner has cited no state or federal authority that conflicts with the holding in her case. No case has been cited that holds the in chambers exercise of peremptory challenges to be a "critical stage" of criminal proceedings requiring the presence of the accused. The holding in petitioner's case is consistent with other state court decisions. *See, e. g., Tatum v. United States*, 330 A. 2d 522 (1974) and *Montgomery v. State*, Mo., 461 S. W. 2d 844 (1971).

Petitioner was present throughout voir dire and had every opportunity to discuss individual jurors with her trial counsel. The cases relied on by petitioner do not address the issue raised because they do not involve defendants who were present at all times during jury voir dire.

The court below likewise considered petitioner's complex factual claims of trial court error and prosecutorial misconduct and rejected them on the basis of well-settled principles of law and the facts presented in the record.

2. The petition does not raise a substantial federal question.

No case has been cited that holds that the in chambers exercise of peremptory challenges is a "critical stage" of criminal proceedings requiring the presence of the defendant so as to raise a substantial federal question under the Fourteenth Amendment.

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CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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